

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RONALD E. PROCTOR, JR.,)
)
Plaintiff,)
)
v.) Civ. No. 05-134-JJF
)
CAPT CLYDE SEGARS, CPL. FRANK)
KROMKA, LT. LARRY SAVAGE,)
BRIAN ENGREM LAW LIBRARIAN,)
and C/O JANE MORAN,)
)
Defendants.)

ORDER

WHEREAS, plaintiff is a prisoner incarcerated at the Delaware Correctional Center in Smyrna, Delaware, and on plaintiff filed a complaint under 42 U.S.C. § 1983, along with an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 (D.I. 1; D.I. 2);

WHEREAS, on April 13, 2005, the Court entered an order denying leave to proceed in forma pauperis because plaintiff has had six prior suits dismissed as frivolous, malicious or for failure to state a claim upon which relief may be granted and the instant complaint does not allege an imminent threat of physical injury (D.I. 3);

WHEREAS, the Court ordered plaintiff to pay the \$250 filing fee within thirty (30) days from the date the order was sent or the case would be dismissed;

WHEREAS, on June 1, 2005, the Court dismissed the

complaint because plaintiff failed to pay the \$250 filing fee within the time prescribed (D.I. 4);

WHEREAS, on August 8, 2005, the Court received plaintiff's "Motion to Reinstate" which the Court construes as a motion for reconsideration (D.I. 5);

WHEREAS, plaintiff alleges that on September 7, 2004, the defendants confiscated his "legal material" and his complaint concerns First Amendment violations (Id.);

WHEREAS, plaintiff further alleges that at the time, several defendants ordered him to move and that he was "in imminent danger of the direct threat of excessive force" (Id.);

WHEREAS, a plaintiff with "three strikes" under 28 U.S.C. 1915(g) is only entitled to proceed in forma pauperis if the plaintiff is in imminent danger of serious physical injury or death at the time of filing the complaint, Abdul-Akbar v. McKelvie, 239 F.3d 307 (3d Cir. 2001);

WHEREAS, plaintiff fails to allege sufficient facts to support his claim that he was in imminent danger of physical injury at the time he filed the complaint;

THEREFORE, at Wilmington this 22 day of August, 2005, IT IS ORDERED that the plaintiff's request is DENIED. The plaintiff shall pay the filing fee of \$250.00 within thirty (30) days from the date this order is sent. If the plaintiff fails to pay the \$250.00 in the time provided,

then the Court shall dismiss the action without prejudice.


United States District Judge